

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-325 Erie
	:	
VICTORY ENERGY OPERATIONS	:	Judge Sean J. McLaughlin
LLC,	:	
	:	
Defendant	:	
	:	
	:	JURY TRIAL DEMANDED

**DEFENDANT'S MOTION IN LIMINE NO. 3 BARRING EVIDENCE THAT
VICTORY ENERGY BREACHED THE LICENSE AGREEMENT**

Introduction

Defendant Victory Energy Operations LLC ("VEO"), by its undersigned counsel, for its Motion *In Limine* Barring Evidence That Victory Energy Breached The License Agreement, states as follows:

1. VEO and Erie Power Technologies, Inc. ("EPTI") entered into a License Agreement that authorized VEO to design, manufacture, market and sell industrial, natural circulation water tube steam generators with a steam capacity of between 29,000 and 150,000 pounds per hour of steam. (A copy of the License Agreement with the Annexes will be submitted, under seal, as Exhibit 1). VEO's authorization included, but was not limited to, the M Series Keystone boilers generally described in Annex I.

2. Indeck Keystone Energy LLC alleges that it became the Licensor under the License Agreement as of September 8, 2004. On October 30, 2004, IKE filed

suit, alleging claims of trademark infringement, trademark dilution, trade secret misappropriation, unfair competition and unjust enrichment.

3. IKE has never asserted a claim for breach of contract, but asserts in its pretrial statement that VEO violated the Agreement. For instance, IKE alleges VEO failed to attach the “Keystone” mark to the boilers it sold during the license period, in violation of the Agreement.

4. It would be grossly prejudicial and totally irrelevant to the claims at issue to allow IKE to introduce evidence that VEO violated the License Agreement where IKE has failed to assert such a claim.

WHEREFORE, Defendant Victory Energy Operations LLC requests that the Court enter an order barring IKE from introducing evidence that VEO failed to comply with the terms and conditions of the License Agreement.

Dated: April 27, 2007

Respectfully submitted,

/s/ Christopher T. Sheean
One of the Attorneys for Plaintiff,
VICTORY ENERGY OPERATIONS,
LLC

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MOTION *IN LIMINE* CERTIFICATE

Christopher T. Sheean, an attorney, certifies pursuant to Local Rule 16.1.4(D), that all parties made a reasonable effort to reach agreement on the issues raised by this motion prior to its filing.

/s/ Christopher T. Sheean_____

CERTIFICATE OF SERVICE

Christopher T. Sheean, an attorney, certifies that on the 27th day of April, 2007, he caused a copy of the foregoing ***Motion In Limine Barring Evidence That Victory Energy Breached The License Agreement*** to be filed electronically, and that the CM/ECF system for the court will e-mail a copy of the foregoing to the following counsel of record:

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/s/ Christopher T. Sheean
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